IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.310 of 2000

Decided on : January 10, 2007

New India Assurance Company **....Appellant.**

VERSUS

Smt. Salja Devi and others **....Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : **Mr. K.D. Sood, Advocate.**

For the Respondents : **Mr. Naveen Bhardwaj, Advocate, for respondents No.1(a) to 1(f).**

Mr. R.K. Gautam, Senior Advocate, with Mr. Anurag Sharma, Advocate, for respondents No.2 and 3.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. This appeal by the Insurance Company is directed against the award of the Motor Accident Claims Tribunal, whereby after having assessed the amount of compensation payable to injured-respondent Mani Ram, now deceased and represented by his LRs, on account of the injuries sustained by him in the accident, the Tribunal has ordered that the entire amount of compensation be paid by the Insurance Company, on account of the vehicle being insured with it for risk of passengers, carried in the vehicle.

3. Grievance of the appellant is two-fold. First, the amount of compensation awarded by the Tribunal is grossly on the higher

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Whether the reporters of the local papers may be allowed to see the Judgment?

side. Secondly, the driver of the vehicle did not have valid license to drive the vehicle at the time when the accident took place.

4. As regards the first contention, it is alleged that the appellant had been permitted to raise all those defences as are available to the insured, because application, under Section 170 of the Motor Vehicles Act moved by it, has been allowed by the Tribunal and so the plea is available to the appellant, even in the appeal. The fact that the appellant was allowed to raise all the pleas available to the insured is not disputed. Hence, it is held that the appellant can raise the plea in appeal also.

5. The contention of the learned counsel for the appellant is that the injured was 70-75 years of age, per his own statement in the cross-examination, and, therefore, the plea that he was working as an employee at a saw-mill and getting Rs.3,000/- per month as salary cannot be believed. The argument merits rejection for the simple reason that the petitioner himself and the person with whom he was employed testified that the petitioner had been working at the saw-mill and getting Rs.3,000/- a month as salary. Further, though the petitioner in the cross-examination stated that his age was 70-75 years, the team of doctors that conducted his examination for determining whether he had suffered any disability or not, had recorded his age as 60 years. In the petition also his age is recorded as 60 years.

6. It has come in evidence of the petitioner that he remained in PGI at Chandigarh in connection with the treatment for the injuries sustained by him in the accident. The petitioner testified

that after the accident he had not been able to do any work and that he was being attended upon by one of his sons round the clock. The petitioner further stated that he had spent Rs.40,000/- to Rs.50,000/- on his treatment. The disability certificate proved by the petitioner, which is Ex. PW-4/A, shows that he had sustained 60% permanent disability.

7. Looking to the facts and the circumstances of the case, I do not think that the amount of compensation awarded by the Tribunal is on the higher side. Simply for the reason that the Motor Accident Claims Tribunal has not given the break-up of the compensation, the amount cannot be reduced. The petitioner suffered loss of earnings. He remained unemployed till the time of his death. The date of his death is 24.1.2003. That means for six years he could not earn any money, because of the disability caused by the injuries sustained by him in the accident. The amount of compensation awarded by the Tribunal falls short of even the actual loss of earnings suffered by the petitioner.

8. As regards the second contention, copy of driving license was proved by summoning a Clerk from the Licensing Authority, Ambala. The license was issued in the year 1994. It bears an endorsement, per which the driver Rajesh Kumar has been authorized to drive LTV, that is to say Light Motor Transport Vehicle. The contention raised on behalf of the appellant is that this endorsement is not signed. The witness examined by the appellant to prove this license, namely RW-1 Krishan Lal, stated that in another case, arising out of this very accident, he appeared as a witness and

there he was shown the license and the endorsement on that license was signed by the Licensing Authority and that it appeared that on Ex. R-1, the Photostat copy, the signature did not appear. In view of this statement, the contention cannot be accepted.

9. Next, it is urged by the learned counsel that it has not been proved whether this endorsement was there on the license on the day of the occurrence of the accident or it was made thereafter. The submission requires outright rejection. The reason is that it was for the appellant itself to lead evidence either by examining someone from the Office of the Licensing Authority or by summoning the driver as its witness to show as to on which date this endorsement was made.

10. As a result of the abovestated position, the appeal is dismissed.

January 10, 2007(sd) **(Surjit Singh), J.**